

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Foreclosure is the means for enforcing a financial obligation through sale of property that was pledged as security for the obligation or that is otherwise subject to sale for satisfaction of the obligation. Current law provides for public foreclosure sale at auction by the clerk of the circuit court and requires a traditional auction with bidders appearing in person at a designated place and time for the auction.

This bill amends s. 45.031, F.S., to allow the clerk the option to conduct foreclosure sales by "electronic means," that is, over the Internet. The clerk must provide a computer terminal for public use in bidding. The clerk is additionally authorized to accept payment by electronic means. This bill provides for electronic proxy bidding by the clerk and provides that the clerk may require bidders to advance funds to pay for the statutory deposit of a winning bidder, which is 5% of the winning bid. If the clerk requires advance electronic deposits to secure the right to bid, then the deposits are not subject to the fee under s. 28.24(10), F.S.¹ The portion of the advance deposit from a winning bidder must, upon acceptance of the winning bid, be subject to the fee under s. 28.24(10), F.S. Furthermore, this bill provides that the clerk must accept an advance credit proxy bid from the plaintiff of any amount up to the maximum allowable credit bid of the plaintiff.

Current law provides a \$60 fee to the clerk for conducting a traditional foreclosure sale. This bill amends the fee provisions in s. 45.035, F.S., to provide for an additional \$40 service charge for a foreclosure sale conducted through electronic means.

A tax deed sale is the forced sale, conducted by a governmental agency, of real estate for nonpayment of taxes. This bill provides that any clerk who conducts electronic foreclosure sales pursuant to s. 45.031(10), F.S., may also conduct electronic tax deed sales. Furthermore, this bill provides that electronic proxy bidding is allowed and the clerk may require bidders to advance sufficient funds to pay the deposit. The clerk must provide access to public computer terminals and may receive electronic deposits and payments related to the sale. The portion of the advance deposit from a winning bidder is subject the fee under s. 28.24(10), F.S., upon acceptance of the winning bid.

C. SECTION DIRECTORY:

Section 1 amends s. 45.031, F.S., regarding judicial sales procedures.

Section 2 amends s. 45.035, F.S., regarding clerk's fees.

Section 3 amends s. 197.542, F.S., regarding sales at public auction.

Section 4 provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

¹ Section 28.24(10), F.S., provides that the clerk of the court of the court receives 3 % of the first \$500 and 1.5% of each subsequent \$100 of money received into the registry of court.

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may increase the cost to the plaintiff of conducting a judicial sale by \$40.

D. FISCAL COMMENTS:

This bill will increase the fee for conducting a foreclosure sale by \$40, but only in counties that elect to utilize electronic sales of foreclosed properties. Those clerks that receive the additional revenue will also face additional expenses in order to employ the vendor of the electronic sales service. The net effect on clerks of court is unknown, although it is unlikely to be negative as clerks would not elect to utilize electronic sales if such were to cause a negative fiscal impact.

Per the Florida Association of Court Clerks, "it is anticipated that the \$100 fee would help offset the cost of the program."

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No Statement Submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 19, 2008, the Committee on Courts adopted one amendment to this bill. The amendment made the following revisions to the bill:

- Added that the clerk may require bidders to advance sufficient funds to pay for the statutory deposit of a winning bidder, which is 5% of the winning bid.
- The clerk must accept an advance credit proxy bid from the plaintiff of any amount up to the maximum allowable credit bid of the plaintiff.
- Clarifies that the clerk receives an additional \$40 service charge for conducting the electronic sale, which will be assessed as costs and advanced by the plaintiff before the sale.
- Adds that if the clerk requires advance electronic deposits to secure the right to bid, then the deposits are not subject to the fee under s. 28.24(10), F.S.²
- Adds that the portion of the advance deposit from a winning bidder (5% of the winning bid) must, upon acceptance of the winning bid, be subject to the fee under s. 28.24(10), F.S.

The bill was then reported favorably with an amendment.

On March 26, 2008, the Safety and Security Council adopted one substitute amendment to this bill and one amendment to the substitute amendment. The amendments provide that any clerk who conducts electronic foreclosure sales may also conduct electronic tax deed sales. The bill was then reported favorably as a council substitute. This analysis is drafted to the council substitute.

² Section 28.24(10), F.S., provides that the clerk of the court of the court receives 3 % of the first \$500 and 1.5% of each subsequent \$100 of money received into the registry of court.